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File No. O Electric (Sarcharge) 47

Legal **DEPARTMENT**

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Subject:—

Opinions Under the Bombay Electricity (Sarcharge) Act 1946

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R.I. No. 11661 dt. 20-12-46.

Sub mitted with reference to para 3 P.W.D. note lated 18-12-46 at pages 145 and 146. ante

2. Please see the letter of the Surat Electricity Co., Ltd., dated 7-10-1946 at p. 135 ante.

3. The question for consideration of the R.L.A. is whether the action taken by the Surat Electricity Co., in volunterily reducing the rate of surcharge from 11% to 5% with effect from 1-7-46 can be regularised by Govt. retrospectively under section 3(6) of the Bombay Electricity (Surcharge) Act, 1946 (Bom. XIX of 1946).

4. By Government Order, P.W.D., No.6331/36, dated 9-8-44 issued under the Bombay Electricity Supply (Linensed Undertakings' War Costs) order, 1944, Govt. fixed, with effect from the date of the Order, the rate of war costs surcharge, in the case of the Surat Electricity Co. at 11%. The Electricity Supply (Licensed Undertakings' War Costs) Order which was issued under rule 81 of the Defence of India Rules has expired on 1-10-46 and has been replaced by the Bombay Electricity (Surcharge) Act, 1946 (Bom.XIX of 1946). Section 5 of the Act provides that any existing surcharge applied by a licensee under the provisions of the Order to his charges shall be deeme to be surcharge fixed under section 3.

Although the surcharge fixed under the Order in the case of the Surat Electricity Co., was 11% it will be seen from the Company's letter dated 7-10-1946 at p. 135 that it has voluntarily reduced the rate to 5% with effect from 1-7-1946. In view of the provisions of cluses 5 of the Order for such reduction of the surcharge during the period from 1-7-1946 to 30-9-1946 the Company should have approached Govt. under the first para of caluse 5 and sub-clause (1) of cluse 9 for a revision of the fixed rate. As the

order has lapsed any action under it need not bexx considered.

5. As the reduction in the surcharge was already been affected before the coming into operation of Bombay Act XIX of 1946 there appears to contravention of section 4bof the Act. Moreover, the provision in that section for obtaining the previous sanction of the Provincial Govt. for supplying energy at chargee other than charges surcharged does not appears to be mandatory particularly when the charges were reduced and there is no penal provision in the Act for the contravention of the provision.

6. There is, however, no doubt that the Co., was leavying the surcharge under the authority of the Govt. orders. To regularise the reduction made in the surcharge it would therefore be necessary for Govt. to issue fromal order under section 3(6)as suggested by P.W.D. for reducing the rate from 11% to 5% with effect from 1-7-1946 In the circumstance of the case there appears no legal objection to giving retrospective effect to the proposed order.

7. The view taken in para 3 of P.W.D. note dated 18-12-46 at pages 145-146 is correct and the action suggested therein to regularise the position may be taken.

Sd/-
21-1-47

A. S.

I agree.

In exercise of the power conferred by sub-cluse (1) of cluse 4 of the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order ,1944 Govt, with effect from 9-8-1944, fixed the rate of wa costs surcharge in respect of the Surat Electricity Company, Ltd, at 11 p.c. (vide Order No.6331/36,dated

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P. 19 ante.

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9-8-1944). For the reasons stated in its letter No. S.E.C., dated 7-10-1946, the Board of Directors the Surat Electricity Company, Ltd., at their meeting held on 24-7-1946 reduced the rate of war costs surcharge from 11 to 5 p.c. and the reduced rate has been made applicable to consumption of energy with effect from 1st July 1946, that is, before the Bombay Electricity supply (Licensed Undertakings' War Costs) Order, 1944, ceased to be in force. Under clause 5 of the said Order, it was not lawful for the

Office of the R.L.A.

The view taken in paragraph 3 of Public Works Department note dated the 18th December 1946 at pages 145-146 is correct and the action suggested therein to regularise the position may be taken.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 1894, dated the 17th February 1947.

Office of the R.L.A.

It appears that the Ahmedabad Electricity Co. Ltd. has revised its tariff rates for all classes of supply with effect from 26-1-1946 and considers that the war costs surcharge would not be leviable in the case of those consumers who have accepted the new rates. The Examiner, outside Audit, observes at p. 120 ante:

"It seems the company has discontinued war costs surcharge from 1-4-1946 except in a few cases of consumers covered by special contract who have not accepted the new rates. The War Costs Surcharge Order does not however seem to contemplate the levy of surcharge in some cases of consumers only and its abolition in the case of others".

The P.W.D. considers that in view of the second proviso to clause 5 of the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944, the action of the company in levying surcharge only in the case of consumers who have not accepted the new rates is not wrong. The R.L.A. is requested to advise whether this view is correct.

The view taken by P.W.D. is correct. The second proviso to clause 5 of the Bombay Electricity Supply (Licensed Undertakings' War Costs) Order, 1944, inter alia provided tha no war costs surcharge shall be effective upon the charges for the supply of energy under any contract entered into after 1st May 1942. The Ahmedabad Electricity Co.Ltd. revised its tariff rates with effect from 1-4-1946, that is to say after 1st May 1942. Consequently the War Costs Surcharge ceased to be effective from 1-4-1946, in the case of those consumers who accepted the new rates. The War Costs Surcharge could therefore be levied by the Company in the case of those consumers only who preferred to remain under the old contract and did not accept

the new rates and this surcharge has been continued by virtue of section 5 of the Bombay Electricity (Surcharge) Act, 1946 which came into force with effect from 30-9-1946.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No. 6575 , dated the 26th June 1947